

1
2
3
4
5
6
7
8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4241

13 **EDUARDO GONZALEZ**
14 **15279 Orchid Street**
15 **Fontana, CA 92335**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

16 **Pharmacy Technician Registration No. TCH**
17 **96364**

Respondent.

18 **FINDINGS OF FACT**

19 1. On or about August 20, 2012, Complainant Virginia K. Herold, in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
21 filed Accusation No. 4241 against Eduardo Gonzalez (Respondent) before the Board of
22 Pharmacy. (Accusation attached as Exhibit A.)

23 2. On or about February 1, 2011, the Board of Pharmacy (Board) issued Pharmacy
24 Technician Registration No. TCH 96364 to Respondent. The Pharmacy Technician Registration
25 was in full force and effect at all times relevant to the charges brought in Accusation No. 4241
26 and will expire on February 28, 2013, unless renewed.

27 3. On or about August 24, 2012, Respondent was served by Certified and First Class
28 Mail copies of the Accusation No. 4241, Statement to Respondent, Notice of Defense, Request

1 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
2 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
3 section 4100, is required to be reported and maintained with the Board. Respondent's address of
4 record was and is 15279 Orchid Street, Fontana, CA 92335.

5 4. Service of the Accusation was effective as a matter of law under the provisions of
6 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
7 124.

8 5. The aforementioned documents have not been returned by the U.S. Postal Service,
9 and a mail receipt for the certified mailed copy of the Accusation was received in this Office on
10 August 29, 2012.

11 6. Government Code section 11506 states, in pertinent part:

12 (c) The respondent shall be entitled to a hearing on the merits if the respondent
13 files a notice of defense, and the notice shall be deemed a specific denial of all parts
14 of the accusation not expressly admitted. Failure to file a notice of defense shall
15 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
16 may nevertheless grant a hearing.

17 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
18 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
19 4241.

20 8. California Government Code section 11520 states, in pertinent part:

21 (a) If the respondent either fails to file a notice of defense or to appear at the
22 hearing, the agency may take action based upon the respondent's express admissions
23 or upon other evidence and affidavits may be used as evidence without any notice to
24 respondent.

25 9. Pursuant to its authority under Government Code section 11520, the Board finds
26 Respondent is in default. The Board will take action without further hearing and, based on the
27 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
28 taking official notice of all the investigatory reports, exhibits and statements contained therein on
file at the Board's offices regarding the allegations contained in Accusation No. 4241, finds that
the charges and allegations in Accusation No. 4241, are separately and severally, found to be true
and correct by clear and convincing evidence.

1 10. Taking official notice of its own internal records, pursuant to Business and
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
3 and Enforcement is \$2,125.00 as of October 9, 2012.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Eduardo Gonzalez has subjected
6 his Pharmacy Technician Registration No. TCH 96364 to discipline.

7 2. The agency has jurisdiction to adjudicate this case by default.

8 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
9 Registration based upon the following violations alleged in the Accusation which are supported
10 by the evidence contained in the Default Decision Evidence Packet in this case.

11 a. Grounds exist to revoke Respondent's license pursuant to Code section 4300, section
12 4301, subdivisions (f) and (l), as well as 490 and 493 for unprofessional conduct and for five
13 criminal convictions between 2009 and 2012 that are substantially related to the qualifications,
14 functions, and duties of a Pharmacy Technician.

15 b. Grounds exist to revoke Respondent's license pursuant to Code sections 4300, and
16 4301, subdivisions (f) and (g), for the commission of an act of dishonesty and knowingly making
17 or signing a document falsely representing a fact when he failed to disclose his January 6, 2009
18 criminal conviction for a violation of Penal Code section 647(f) (disorderly conduct: public
19 intoxication) in his application.

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

It is so ORDERED ON November 7, 2012

By Stanley C. Weiss
STANLEY C. WEISSER
Board President

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 DIANE DE KERVOR
Deputy Attorney General
4 State Bar No. 174721
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2611
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 4241

12 **EDUARDO HUVENTINO GONZALEZ**
13 15279 Orchid Street
Fontana, CA 92335

A C C U S A T I O N

14 Pharmacy Technician Registration No. TCH
15 96364

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about February 1, 2011, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 96364 to Eduardo Gonzalez (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on February 28, 2013, unless renewed.

26 ///

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Code section 118, subdivision (b), states, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

....
(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

8. Section 4300 of the Code provides, in pertinent part, that every license issued may be suspended or revoked.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3
4
5

6
7
8

9

10
11
12

14

15

16
17
18
19
20
21
22
23
24
25

1 REGULATORY PROVISIONS

2 10. California Code of Regulations, title 16, section 1769 states, in
3 pertinent part:

4 (b) When considering the suspension or revocation of a facility or a personal license
5 on the ground that the licensee or the registrant has been convicted of a crime, the
6 board, in evaluating the rehabilitation of such person and his present eligibility for a
license will consider the following criteria:

7 (1) Nature and severity of the act(s) or offense(s).

8 (2) Total criminal record.

9 (3) The time that has elapsed since commission of the act(s) or offense(s).

10 (4) Whether the licensee has complied with all terms of parole, probation,
11 restitution or any other sanctions lawfully imposed against the licensee. (5) Evidence,
if any, of rehabilitation submitted by the licensee.

12 11. California Code of Regulations, title 16, section 1770, states:

13 For the purpose of denial, suspension, or revocation of a personal or
14 facility license pursuant to Division 1.5 (commencing with Section 475) of the
Business and Professions Code, a crime or act shall be considered substantially
15 related to the qualifications, functions or duties of a licensee or registrant if to a
substantial degree it evidences present or potential unfitness of a licensee or registrant
16 to perform the functions authorized by his license or registration in a manner
consistent with the public health, safety, or welfare."

17 COST RECOVERY

18 12. Section 125.3 of the Code states, in pertinent part, that the Board
19 may request the administrative law judge to direct a licensee found to have committed
20 a violation or violations of the licensing act to pay a sum not to exceed the reasonable cost
21 of the investigation and enforcement of the case.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 (March 7, 2012 Criminal Conviction for Driving on a Suspended License from a DUI
3 on January 25, 2012)

4 13. Grounds exist to revoke Respondent's license pursuant to Code section 4300, section
5 4301, subdivisions (f) and (l), as well as 490 and 493 for unprofessional conduct and for a
6 criminal conviction that is substantially related to the qualifications, functions, and duties of a
7 Pharmacy Technician.

8 a. On or about March 21, 2012, in a case entitled People vs. Gonzales (Tulare
9 County Superior Court Case No. 12001645), Respondent pled guilty to a violation of Vehicle
10 Code section 14601.2(a), driving on a suspended license from DUI, a misdemeanor.

11 b. The facts and circumstances surrounding this cause for discipline are as
12 follows: On January 25, 2012, Respondent drove his vehicle when his license was suspended
13 from a previous conviction from driving under the influence of alcohol.

14 c. On March 21, 2012, Respondent was sentenced to three years probation, 10
15 days in jail, and ordered to pay \$2,291 in fines and fees.

16 **SECOND CAUSE FOR DISCIPLINE**

17 (July 21, 2011 Criminal Conviction for Public Intoxication on May 2, 2011)

18 14. Grounds exist to revoke Respondent's license pursuant to Code sections 4300, and
19 4301, subdivisions (f), (h), (k), and (l) as well as 490 and 493 for unprofessional conduct, using
20 alcoholic beverages to an extent or in a manner as to be dangerous to himself or others, and for
21 multiple criminal convictions involving the use of alcoholic beverages, and for a criminal
22 conviction that is substantially related to the qualifications, functions, and duties of a Pharmacy
23 Technician.

24 a. On or about July 21, 2011, in a case entitled People vs. Gonzales (San
25 Bernardino Superior Court Case No. MWV1102211), Respondent pled nolo contendere to a
26 violation of Penal Code section 415(3), disorderly conduct: public intoxication, a misdemeanor.

27 b. The facts and circumstances surrounding this cause for discipline are as
28 follows: On May 2, 2011, Respondent and a friend left a restaurant/bar very intoxicated. They

1 were asked to leave the area by the mall security. Respondent and his friend verbally and
2 physically harassed the two security guards at a mall. Respondent yelled obscenities, touched his
3 own genitals, and lunging at one of the guards with a fist. Respondent and his friend then fled the
4 scene. Respondent was apprehended and arrested for assault, public intoxication, and disturbing
5 the peace.

6 c. On July 21, 2011, Respondent was sentenced to three years probation, 52
7 days in jail, weekend commitment, and ordered to pay a \$692 fine.

8
9 **THIRD CAUSE FOR DISCIPLINE**

10 **(April 20, 2010 Criminal Conviction for Driving Under the Influence on January 16, 2010)**

11 15. Grounds exist to revoke Respondent's license pursuant to Code sections 4300, and
12 4301, subdivisions (h), (k) and (l) as well as 490 and 493 for using alcoholic beverages to an
13 extent or in a manner as to be dangerous to himself or others and for multiple criminal
14 convictions involving the use of alcoholic beverages and that are substantially related to the
15 qualifications, functions, and duties of a Pharmacy Technician.

16 a. On or about April 20, 2010, in a case entitled People vs. Gonzales (San
17 Bernardino Superior Court Case No. TVA1000174), Respondent pled nolo contendere to a
18 violation of Vehicle Code section 23152(b), driving under the influence of alcohol with a BAC
19 greater than .08, a misdemeanor.

20 b. The facts and circumstances surrounding this cause for discipline are as
21 follows: On January 16, 2010, Respondent swerved into another car causing an accident. When
22 police arrived, Respondent admitted that he had had one alcoholic drink and he was given a field
23 sobriety test, which he failed. He was transported to the Police Department where he took a
24 breathalyzer test with a result of .08% BAC.

25 c. On April 20, 2010, Respondent was sentenced to two days in jail, three
26 years summary probation, to pay \$1,838.00 in fines and fees, and to attend a three month First
27 Offender Program.

28 d. On November 28, 2011, Respondent admitted violating the terms of his

1 probation and his probation was extended to expire on November 28, 2012 with certain
2 modifications.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(April 8, 2010 Criminal Conviction for Petty Theft on February 5, 2010)**

5 16. Grounds exist to revoke Respondent's license pursuant to Code section 4300, section
6 4301, subdivisions (f) and (l), as well as 490 and 493 for commission of an act involving moral
7 turpitude and dishonesty leading to a criminal conviction that is substantially related to the
8 qualifications, functions, and duties of a Pharmacy Technician.

9 a. On or about April 8, 2010, in a case entitled People vs. Gonzales (San
10 Bernardino Superior Court Case No. MWV1001084), Respondent pled guilty to a violation of
11 Penal Code section 484(a)/490.5(a), petty theft: retail merchandise, a misdemeanor.

12 b. The facts and circumstances surrounding this cause for discipline are as
13 follows: on or about February 5, 2010, Respondent was observed taking the price tag off of a pair
14 of sunglasses valued at \$26.10, putting the sunglasses in his pocket, and walking out of a Sears
15 Grand store by a security guard watching security cameras. When confronted, the security guard
16 located the glasses in Respondent's pocket. Respondent admitted to the police that he took the
17 glasses without paying for them.

18 c. On April 8, 2010, Respondent was sentenced to 2 years probation, to pay a
19 \$491 fine and restitution, and to 1 day in jail. On July 21, 2011, Respondent violated the terms of
20 his probation. his probation was ordered terminated, and in lieu of the balance of his unpaid fine
21 he was sentenced to serve four days in jail on a work release/weekender program.

22 d. On August 8, 2011, the guilty plea was set aside and vacated, a plea of not
23 guilty was entered, and the complaint dismissed pursuant to Penal Code 1203.4.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(January 6, 2009 Criminal Conviction for Drunk in Public on November 16, 2008)**

26 17. Grounds exist to revoke Respondent's license pursuant to Code sections 4300, and
27 4301, subdivisions (h), (k) and (l) as well as 490 and 493 for using alcoholic beverages to an
28 extent or in a manner as to be dangerous to himself or others and for multiple criminal

1 convictions involving the use of alcoholic beverages and that are substantially related to the
2 qualifications, functions, and duties of a Pharmacy Technician.

3 a. On or about January 6, 2009, in a case entitled People vs. Gonzales (San
4 Bernardino Superior Court Case No. MVA803725), Respondent pled guilty to a violation of
5 Penal Code section 647(f), disorderly conduct: public intoxication, a misdemeanor.

6 b. The facts and circumstances surrounding this cause for discipline are as
7 follows: On November 16, 2008, a Fontana Police Department Officer was dispatched to a
8 location where individuals were engaged in an altercation. He observed several subjects arguing
9 on the street and sidewalk. Respondent and his brother appeared to be very intoxicated and would
10 not comply with the Officer's orders to sit down and stop arguing. Respondent called the Officer
11 an expletive "pig." After sitting down on the curb, Respondent stood up again and faced an
12 officer. Because he was stumbling, could not care for himself, and appeared very intoxicated, he
13 was arrested.

14 c. On May 1, 2008, Respondent was sentenced to pay a \$150.00 fine.

15 **SIXTH CAUSE FOR DISCIPLINE**

16 **(Failure to Disclose January 6, 2009 Criminal Conviction on Application)**

17 18. Grounds exist to revoke Respondent's license pursuant to Code sections 4300, and
18 4301, subdivisions (f) and (g), for the commission of an act of dishonesty and knowingly making
19 or signing a document falsely representing a fact when he failed to disclose his January 6, 2009
20 criminal conviction for a violation of Penal Code section 647(f) (disorderly conduct: public
21 intoxication) in his application.

22 19. The facts supporting this cause for discipline are as follows. On or about September
23 15, 2009, Respondent filed an application with the Pharmacy Board to be a Pharmacy Technician.
24 Question 6 on the application asks:

25 Have you ever been convicted of or pled no contest to a violation of any law of a
26 foreign country, the United States or any state or local ordinances? You must include
27 all misdemeanor and felony convictions, regardless of the age of the conviction,
28 including those which have been set aside under Penal Code section 1203.4. Traffic
violations of \$500 or less need not be reported. If "yes," attach an explanation
including the type of violation, the date, circumstances, location and complete
penalty received. In addition to this written explanation, please provide the Board of

1 Pharmacy with **certified copies of all pertinent court documents or arrest reports**
2 **related to this conviction.** (Emphasis in original.)

3 20. Respondent checked "no" to that question. He signed the application, under penalty
4 of perjury, on September 12, 2009. Accordingly, Respondent did not disclose his January 6,
5 2009, conviction on his application to the Pharmacy Board, as described in paragraph 16 above,
6 which is herein incorporated by reference.

7 PRAYER

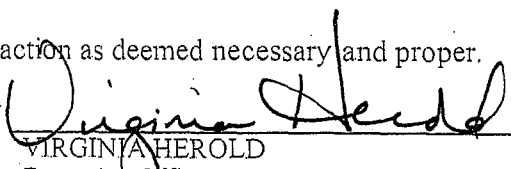
8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Pharmacy issue a decision:

10 1. Revoking or suspending Pharmacy Technician Registration Number TCH 96364,
11 issued to Eduardo Gonzalez

12 2. Ordering Eduardo Gonzalez to pay the Board of Pharmacy the reasonable costs of the
13 investigation and enforcement of this case, pursuant to Business and Professions Code section
14 125.3;

15 3. Taking such other and further action as deemed necessary and proper.

16 DATED: 8/20/12


17 VIRGINIA HEROLD
18 Executive Officer
19 Board of Pharmacy
20 Department of Consumer Affairs
21 State of California
22 Complainant

23 SD2012702950
24 70561359.doc
25
26
27
28